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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,114	07/08/2003	Mark S. Fernandez	022150-9002	9109

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EXAMINER	
HECKENBERG JR, DONALD H	

ART UNIT	PAPER NUMBER
1722	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/615,114	FERNANDEZ ET AL.	
	Examiner	Art Unit	
	Donald Heckenberg	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *08 July 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date --.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs mentioned in the description: the "warning light 123" (specification, p. 5, line 1); and the "mold chamber 112" (specification, p. 6, l. 6).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The disclosure is objected to because of the following informalities:

At page 4, line 15, the second time the "chute" is referenced, its reference numeral should be "139" instead of "135."

Page 5, line 19 refers to the "mold chamber 126." The melting chamber has previously been designated as reference numeral 126. Further, page 6, line 6 refers to the "mold chamber 112." Therefore the reference to the mold chamber at page 5, line 19 cannot be correct.

Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 13-15 and 17-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 13-15 recite "the heating element" for which there is no antecedent basis in these claims or in the claims from which they depend. However, the heating element is defined in claim 9. Therefore, for further evaluation of these claims in this Office Action it will be assumed that these claims were intended to depend from claim 9. Appropriate clarification and correction is required.

Claims 17-19 recite "the electrical heating element" for which there is no antecedent basis in these claims or in the claims from which they depend. Further, it is noted that claim 17 recites features that appear to be duplicative to the features recited in claim 15. Still further, independent claim 16, is between claims 17-19 and claim 15, and does recite "an electrical heating element." For these reasons, it will be assumed for further evaluation in this Office Action that claims (17-19) were intended to depend from claim 16. Appropriate clarification and correction is required however.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicants are advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1, 3, 4, 6, 7, 9-11, 13, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newton (U.S. Pat. No. 2,025,069) in view of Cziraky (U.S. Pat. Pub. No. 2003/0107152).

Newton discloses a casting machine for making toys (see p. 1, cl. 1, ll. 4-6). The device comprises a stationary melting chamber (22) and an electrically powered heating element (50)

adjacent to the melting chamber (see Fig. 1). The device also comprises a mold (5 and 12) connected to the melting chamber (see Fig. 1).

Newton further discloses a flow path gate (29 and 30) for alternatively permitting and preventing flow between the melting chamber and the mold, and a regulator (31) extending outwardly to allow for permitting and preventing flow of molding material.

Newton does not disclose a housing defining a restricted access area and including a door for containing the stationary melting chamber and the mold. Newton also does not disclose an interlock between the gate and the door which prevents the door from moving from the closed position when the gate is permitting flow. Additionally, the Newton does not disclose a shutdown switch for interrupting power to the heating element when the device is tilted.

Cziraky discloses a toy molding device. Cziraky provides a housing (including base 110 and hinged cover door 112) containing the various components of the device including the mold (122) and the heating chamber (120). Cziraky notes that the housing prevents the user from contacting the molding material during operation (¶ 35).

Cziraky also discloses that the device can be provided with a tilt switch in order to increase the safety of the device by

shutting down the heating element when the device is lifted or knocked over (see ¶ 57).

It would have been obvious to one of ordinary skill in the art at the time of Applicants' invention to have modified the device disclosed by Newton as such to provide a base and hinged cover door to confine the melting chamber and mold (and thus, define a restricted access area) because this would aid in preventing the user from contacting the hot molding material during operation as suggested by Cziraky. It also would have been obvious to one of ordinary skill in the art at the time of Applicants' invention to have modified the device disclosed by Newton to further include a tilt switch because increase the safety of the device by shutting down the heating element when the device is lifted or knocked over as suggested by Cziraky.

Newton additionally discloses that features of the apparatus can be disabled based on the position of the gate in order to prevent the likelihood of the operator being injured from the hot molding material (p. 2, cl. 1, ll. 57-62). Thus, it would have been obvious to one of ordinary skill in the art at the time of Applicants' invention to have modified the device disclosed and suggested by Newton and Cziraky (as described above) to be further provided with an interlock that prevents the cover-door from being opened when the gate is in the open

position because disabling features when the gate is in operating positions aids in preventing the user from contacting hot molding material as suggested by Newton.

9. Claims 2, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newton modified by Cziraky as applied to claims 1, 3, 4, 6, 7, 9-11, 13, 16, and 18 above, and further in view of Lebensfeld et al. (U.S. Pat. No. 5,954,115; previously of record).

Newton and Cziraky disclose and suggest the molding device as described above. Newton and Cziraky do not disclose a door switch that disconnects the electrical power from the heating element when the door is open.

Lebensfeld discloses a toy molding device. The device comprises a housing and a cover-door for restricting access to the melting chamber and mold. The device further comprises an interlock which operates to prevent electrical power from being coupled to the heating device when the cover-door is not in its closed position and/or which prevents the outer cover from being moved out of its closed position unless electrical power to the toy or to the heating device is switched off (cl. 4, ll. 30-35). Lebensfeld provides this so that hot molding material is not spilled outside the toy (cl. 4, ll. 45-48).

It would have been obvious to one of ordinary skill in the art at the time of Applicants' invention to have modified the device disclosed by Newton and Cziraky as such to have a door switch that disconnects the electrical power from the heating element when the cover-door is open because this prevents hot molding material from being spilled outside the toy as suggested by Lebensfeld.

10. Claims 5, 12, 14, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newton modified by Cziraky as applied to claims 1, 3, 4, 6, 7, 9-11, 13, 16, and 18 above, and further in view of Garza (U.S. Pat. No. 6,033,606; previously of record).

Newton and Cziraky disclose and suggest the device as described above. Newton and Cziraky do not disclose a warning light secured to the housing. Newton and Cziraky also do not disclose a temperature control switch for controlling electricity to the heating element based on the temperature of the melting chamber.

Garza discloses a molding device. The device includes a indicator light (19) secured to the base in order to indicate when heater of the device is on and off. Garza further discloses that the apparatus may be provided with a thermostat

which regulates the temperature of the melting chamber in order to shut off the heater when a predetermined temperature for molding is achieved (cl. 1, l. 66 - cl. 2, l. 7).

It would have been obvious to one of ordinary skill in the art at the time of Applicants' invention to have modified the device of Newton and Cziraky as such to further comprise a warning light secured to the base because this would allow for the user to determine if the heater of the device is on or off as suggested by Garza.

It further would have been obvious to one of ordinary skill in the art at the time of Applicants' invention to have modified the device of Newton and Cziraky as such to further comprise a temperature switch, such as in the form of a thermostat, because this would allow for regulation of the melting temperature by shutting down the heating element when a predetermined temperature is reached as suggested by Garza.

11. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newton modified by Cziraky as applied to claims 1, 3, 4, 6, 7, 9-11, 13, 16, and 18 above, and further in view of Saffer et al. (U.S. Pat. No. 4,299,548).

Newton and Cziraky disclose and suggest the device as described above. Newton and Cziraky do not disclose a filler tube leading to the melting chamber.

Saffer discloses a toy casting machine. The machine comprises a filler tube (81) leading to the melting chamber. Saffer provides the filler tube in order to allow for the operator to introduce the molding material into the machine without exposing himself to heat (cl. 3, ll. 52-63).

It would have been obvious to one of ordinary skill in the art at the time of Applicants' invention to have modified the device disclosed by Newton and Cziraky as such to have further comprises a filler tube leading to the melting chamber because this would allow molding material to be introduced into the melting chamber without exposing the operator to heat as suggested by Saffer.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin Utech, can be

reached at (571) 272-1137. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

12-13-04

Donald Heckenberg
A.U. 1722